

Memorandum

SEC Adopts Disclosure Modernization and Simplification Rule Amendments

March 29, 2019

On March 20, 2019, the SEC adopted final rule amendments under its 2015 FAST Act mandate that will modernize and simplify certain disclosure requirements for public companies. Many of these amendments, particularly the exhibit filing amendments, will be welcome updates for public companies and practitioners alike.

Significant amendments include the following:

- **Management’s Discussion and Analysis (MD&A)—Now Only Need Two-Year Discussion.** Companies will now be able to omit discussion of the earliest of the three years presented in their financial statements in their MD&A if such discussion was already included in a prior filing and the company identifies the location in the prior filing where the omitted discussion may be found.
- **Exhibits—Say Goodbye to Most Confidential Treatment Requests/Schedules and the Two-Year Lookback and Hello to the New Description of Securities Exhibit.**
 - Companies will now be permitted to redact confidential information in material contracts and M&A related agreements without submitting a written confidential treatment request to the SEC, so long as the information is (1) not material and (2) would likely cause competitive harm if publicly disclosed (the same standard that applied to a confidential treatment request). Companies must still clearly identify and mark redacted exhibits and the SEC will continue its selective review of redacted filings. If a company has a pending confidential treatment request at the time the final rules become effective it may withdraw the request.
 - Companies will now be permitted to omit entire schedules and similar attachments to exhibits, provided (1) they do not contain material information and (2) the information is not otherwise disclosed in the exhibit or the disclosure document.

- To codify its current practice, the SEC is explicitly allowing companies to omit personally identifiable information such as bank account numbers, social security numbers, home addresses, and similar information from their required exhibits.
- Companies other than certain “newly reporting registrants” will no longer be required to file material contracts that have been fully performed and are no longer operative, but were entered into within two years before the filing date.
- Companies will now need to file a new exhibit to their Annual Reports on Form 10-K that contains a brief description of their securities registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and will need to update the description each year for any modifications or amendments, whether or not material.
- **Description of Property—Only Required to Discuss Properties That Are Material to the Company.** Disclosure about a physical property will only be required to the extent that it is material to the company, which may result in a description of property on an individual basis or on a collective basis, or may result in no disclosure at all.
- **Section 16 Reporting Compliance—No Delinquencies, No Disclosure.** Required caption for Section 16 filing delinquencies disclosure will now be “Delinquent Section 16(a) Reports,” and companies are encouraged not to include this caption when there are no delinquencies to report. The checkbox on the cover page of Form 10-K with respect to disclosure of delinquent filers has also been eliminated.
- **Corporate Governance—Committee Report Clarifications.**
 - The outdated reference in the audit committee report to AU section 380, Communication with Audit Committees has been removed and replaced with a reference to the applicable requirements of the PCAOB.
 - The SEC also clarified that emerging growth companies are not required to provide a compensation committee report.
- **Incorporation by Reference—Say Goodbye to Commission File Numbers and Hello to Hyperlinks.**
 - Companies will now be required to hyperlink to information that is incorporated by reference into a registration statement or report and such information is no longer required to be filed as an exhibit.

- The SEC also eliminated the prohibition on incorporating documents by reference if they have been on file with the SEC for more than five years and did not contain the SEC file number reference.
- With respect to a company's financial statements, the new amendments provide that incorporating by reference, or cross-referencing to, information outside of the financial statements is only permitted when permitted or required by SEC rules, U.S. GAAP, or IFRS.
- **Cover Pages—More Updates.**
 - All of the information on the cover pages of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F will be required to be tagged in Inline XBRL.
 - The cover pages of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F will now be required to include the title of each class of security registered under the Exchange Act, the trading symbol(s) and the name of each exchange on which registered.

Effective Dates

The final rules will be effective 30 days after publication in the Federal Register, except for the amendments to the rules governing redaction of confidential information in material contracts, which will be effective upon publication. In addition, the cover page Inline XBRL tagging requirements are subject to a phase-in period as follows: (1) large accelerated filers that prepare their financial statements in accordance with U.S. GAAP will be required to comply in reports for fiscal periods ending on or after June 15, 2019; (2) accelerated filers that prepare their financial statements in accordance with U.S. GAAP will be required to comply in reports for fiscal periods ending on or after June 15, 2020; and (3) all other filers, will be required to comply in reports for fiscal periods ending on or after June 15, 2021.

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